

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of PAULA L. JOHNSON and FEDERAL DEPOSIT INSURANCE  
CORPORATION, Oklahoma City, Okla.

*Docket No. 97-2119; Submitted on the Record;  
Issued June 17, 1999*

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DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,  
BRADLEY T. KNOTT

The issue is whether appellant had any disability after November 28, 1995 causally related to factors of her employment.

The case has been on appeal previously.<sup>1</sup> In a July 5, 1995 decision, the Board noted that the Office of Workers' Compensation Programs had found that appellant had not met her burden of proof in establishing that irritable bowel syndrome was causally related to compensable factors of her employment, such as the stress associated with her assigned duties of gathering loan information, dealing with difficult account officers, having extra work assigned to her and assisting account officers in the management of portfolios ranging from \$60 million to \$110 million. The Board noted that Dr. James L. Stammer, a Board-certified gastroenterologist, indicated that he was familiar with appellant's employment history and concluded that appellant's irritable bowel syndrome had been aggravated by the factors of her employment. The Board found that Dr. Stammer's report was sufficient to require further development of the record. The Board, therefore, remanded the case for referral of appellant to an appropriate specialist for an examination and opinion on the issue of causal relationship.

In a September 1, 1995 letter, appellant's attorney indicated that appellant's employment with the employing establishment was terminated effective October 25, 1992. The Office referred appellant, together with the statement of accepted facts and the case record, to Dr. Daniel E. Polter, a Board-certified gastroenterologist, for the examination. In a November 28, 1995 report, Dr. Polter stated that appellant's condition was related to factors of her employment. He commented that the stress of the added work load that was placed on appellant at various times aggravated her irritable bowel syndrome. Dr. Polter indicated that appellant's irritable bowel syndrome preexisted her employment at the employing establishment. He concluded, therefore, that her employment did not cause the condition but definitely

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<sup>1</sup> Docket No. 94-314 (issued July 5, 1995). The history of the case is contained in the prior decision and is incorporated by reference.

aggravated the condition. Dr. Polter reported that appellant's condition currently was much improved compared to her symptoms in 1992. He indicated that there was no residual disability related to appellant's employment factors. Dr. Polter stated that appellant's current condition was causally related to nonemployment factors.

In a December 12, 1995 decision, the Office terminated appellant's compensation effective November 28, 1995 on the grounds that the evidence of record established that appellant sustained a temporary aggravation of her underlying irritable bowel syndrome condition which ceased by that date. The Office subsequently paid temporary total disability compensation or compensation for loss of wage-earning capacity based on actual wages for the period June 29, 1992 through November 28, 1995.

In a September 4, 1996 letter, appellant requested reconsideration. She submitted in support of her request a March 11, 1996 report, from Dr. Mark A. Ringold, a gastroenterologist, who indicated that he had reviewed appellant's previous medical records, including the reports of Dr. Stammer. He concurred that appellant had the classic symptoms for severe irritable bowel syndrome. Dr. Ringold stated that appellant would have recurrence of these symptoms when placed in stressful situations. He commented that she probably would require life time medication to control colonic spasms. Dr. Ringold diagnosed severe irritable bowel syndrome aggravated by job stress and indicated that if the stress could be removed or diminished, appellant's symptoms could be controlled by medication.

In a September 11, 1996 merit decision, the Office denied appellant's request for modification of the December 12, 1995 decision.

In a February 13, 1997 letter, appellant again requested reconsideration. She submitted in support of the request a December 12, 1996 report, from Dr. Ringold who stated that appellant's irritable bowel syndrome was not related to stressful employment at the employing establishment but, when stress was removed, the condition would generally improve. He commented that irritable bowel syndrome was a nuisance disease that caused no permanent, serious sequelae. Dr. Ringold noted that any stressful situation, whether it be moving, divorce, or job related, would exacerbate the underlying condition. He stated that when appellant was in the stressful environment, the stress exacerbated her irritable bowel syndrome. Dr. Ringold indicated that there were no permanent residuals of irritable bowel syndrome. He commented that stress was the major exacerbating factor of irritable bowel syndrome. Dr. Ringold stated that when placed in a stressful situation appellant would have a recurrence of her symptoms.

In a March 17, 1997 merit decision, the Office denied appellant's request for modification of the Office's prior decisions.

The Board finds that the medical evidence establishes that appellant did not have any disability after November 28, 1995 due to factors of her employment.

Once the Office accepts a claim it has the burden of justifying modification or termination of compensation. After it has been determined that an employee has disability causally related to his employment the Office may not terminate compensation without

establishing that the disability has ceased or is no longer related to the employment injury.<sup>2</sup> The fact that the Office accepts appellant's claim for a specified period of disability does not shift the burden of proof to appellant. The burden is on the Office with respect to the period subsequent to the date when compensation is terminated or modified.<sup>3</sup>

In this case, both Drs. Polter and Ringold stated that appellant's irritable bowel syndrome was a preexisting condition unrelated to the compensable factors of her employment. Both physicians indicated that the stress of appellant's work aggravated her condition to the point that she would become disabled. Both physicians also indicated that appellant's condition improved once she was removed from the stress. Both physicians concluded that appellant had no permanent changes, effects or residuals from the employment-related aggravations of her irritable bowel syndrome. The medical evidence, therefore, shows that appellant had an employment-related aggravation of a preexisting condition that was not causally related to her employment. The Board has held that an employee is entitled to compensation for the period of disability due to an employment-related aggravation of an underlying, preexisting condition. However, if the effects of the employment-related aggravation have ceased and the employee disability is due solely to the preexisting condition, he or she is no longer entitled to compensation.<sup>4</sup> The medical evidence of record shows that any employment-related aggravation of appellant ceased by the time of Dr. Polter's examination on November 28, 1995. Appellant is not entitled to compensation after that date. The Office, therefore, has met its burden of proof in establishing that appellant's employment-related disability ceased by November 28, 1995.

Dr. Ringold indicated that if appellant were subjected to stress, she would again have the symptoms of irritable bowel syndrome. This opinion represents a fear of future injury. A fear of future injury is not a compensable factor of employment. This is true even if an employee were to be found medically disqualified to continue in employment because of the effect which the employment factors might have on the underlying condition. Under such circumstances, the employee's disqualification for continued employment would be due to the underlying condition, not the employment.<sup>5</sup>

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<sup>2</sup> *Edwin Lester*, 34 ECAB 1807 (1983).

<sup>3</sup> See *George J. Hoffman*, 41 ECAB 135 (1989); *Raymond M. Shulden*, 31 ECAB 297 (1979); *Anna M. Blaine (Gilbert H. Blaine)*, 26 ECAB 351 (1975).

<sup>4</sup> *James L. Hearn*, 29 ECAB 278 (1978).

<sup>5</sup> *Mary A. Geary* 43 ECAB 300 (1991)

The decision of the Office of Workers' Compensation Programs, dated March 17, 1997 is hereby affirmed.

Dated, Washington, D.C.  
June 17, 1999

George E. Rivers  
Member

David S. Gerson  
Member

Bradley T. Knott  
Alternate Member